

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TYRONE H. DAVIS,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 07-693 - MJR
)	
C/O FRANCIS, et al.,)	
)	
Defendants.)	

NOTICE and ORDER

PROUD, Magistrate Judge:

Defendant Sample has filed a Motion for Summary Judgment. **(Doc. 45)**. This motion raises failure to exhaust administrative remedies, which is the same issue raised in the motion for summary judgment previously filed by defendant Francis, **Doc. 31**.

Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982) requires that, when a defendant has filed a motion for summary judgment supported by affidavit, “a prisoner who is a plaintiff in a civil case and is not represented by counsel is entitled to receive notice of the consequences of failing to respond with affidavits to a motion for summary judgment.” *Lewis*, at 102.

The Court reminds defendant’s attorney that the Seventh Circuit expects that the required notice will be filed by **defendant** along with the motion, thereby relieving the Court of the necessity of preparing the notice. *Lewis v. Faulkner*, 689 F.2d 102-103.

Plaintiff is hereby notified that Fed.R.Civ.P. 56(e) states:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered

against the adverse party.

Plaintiff is further notified that the Court will accept as true any assertion of fact in the movant's affidavits unless the plaintiff submits his own affidavits or other documentary evidence contradicting the assertion. Plaintiff may not merely rely on the allegations made in the complaint. He has to come forward at this stage with affidavits or other evidence to contradict the factual assertions made in the affidavits offered in support of the motions for summary judgment.

Plaintiff shall file his response to the motion for summary judgment by **June 29, 2009**.

IT IS SO ORDERED.

DATED: May 27, 2009.

s/ Clifford J. Proud
CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE